

Keane of New Jersey. It is a distinguished panel. One of our former colleagues, Senator Cleland, is on that panel. It is called the 9/11 Commission.

I want to read a couple of statements. This statement was made October 10:

In connection with the commission's second interim report issued on September 23, 2003, we discuss the commission's ongoing effort to get prompt access to some key executive branch and White House documents that the commission needs to complete its work on time. Although we can report substantial progress, the commission is continuing to press for necessary access to some key items.

I don't understand why there would be problems in getting information from the CIA, or the FBI, or the White House, or the FAA. What on Earth is happening?

This is the Federal inquiry into what happened on 9/11 and how we can prevent it from ever happening again. I would think every Federal agency would cooperate fully and immediately. But that, regrettably, has not been the case. October 15, a statement by the 9/11 Commission:

Over the past two weeks, as a result of field interviews conducted by our staff, the commission learned of serious deficiencies in one agency's production of critical documents.

The agency in question happens to be the FAA. Now they indicate they are issuing subpoenas. In fact, they say this disturbing development at one agency has led the commission to reexamine its general policy of relying on document requests rather than subpoenas. They have voted to issue a subpoena to the FAA for documents which have already been requested.

I don't understand. We have a 9/11 Commission to investigate the tragedy that occurred as a result of the terrorist attack on this country. That commission has to issue subpoenas to Federal agencies to get cooperation. I would think every single Federal agency, starting with the White House, would open its records immediately to this commission so we can understand what happened.

I am not accusing anybody of anything, nor is the 9/11 Commission. We want to understand what happened. How did it happen? What clues might we have had? What kind of failing existed with respect to our intelligence that prevented us from knowing and, therefore, preventing these terrorist attacks? When I read this, I shake my head and think it is unbelievable that a commission created by this Congress, called the 9/11 Commission, to get to the bottom of what happened on 9/11, has to issue subpoenas to anybody, or has to send out progress reports to say, Well, we have made progress now in our efforts to gain access to key White House documents. The White House has agreed to brief all commissioners on another set of highly sensitive documents. We will seek prompt resolution of the remaining issues regarding access of these documents.

Why is there a problem? Why would not every agency in every part of this

Government provide this information at will and upon the request of the 9/11 Commission?

I hope we don't see these kinds of reports again. I hope the next report from this commission would tell us the President has requested every single agency to turn over every single document requested by the 9/11 Commission immediately. Let this commission do its work and finish its work, make a report to the Congress and to the American people about what happened on 9/11, about what information existed leading up to 9/11, and how we can learn from that to protect this country against future terrorist attacks.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CARPER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Mr. President, we have just concluded what for many of us was a tough vote. I simply want to express my thanks to the 58 other Democrats and Republicans who joined me—59 in all—in voting for the motion to proceed and to take up for debate and amendment legislation that would reform the way we handle class action lawsuits in this country.

I am disappointed with the vote, that we fell one vote short, but I am encouraged by some of the conversation that took place immediately following the vote by the leaders of both sides and a number of my colleagues, including Senator DODD and Senator LANDRIEU.

I sense there is a genuine willingness on the part of Democrats and Republicans and that one Independent not to give up on this issue. It is one that we need to address and we can address satisfactorily. My own belief is it is one we can address this year.

I have talked to any number of Senators on our side of the aisle who are prepared to offer what I think are constructive perfecting amendments that would make a good bill much better.

I hope what we will do in the days ahead is to reach across the aisle—Republicans to Democrats and Democrats to Republicans—to find a common ground that I think will exist with respect to many of these amendments and to then move forward together and, hopefully, to get to the end of the day when we can vote on a bill and not have to worry about the kind of partisan divide that in some cases characterized this vote and, frankly, characterizes too many votes we cast here.

I was approached by one of my colleagues following the vote who asked if we lost the war. I said: No, no, maybe today the battle was lost but not the war. There is a realization that the way we handle class action litigation in this country is broken. It can be fixed.

As we like to say in Delaware, "If it isn't perfect, make it better." This bill that came out of committee is not perfect. It can be made better. That is what we are going to do.

I yield back my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INHOFE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—EXECUTIVE CALENDAR

Mr. INHOFE. Madam President, as in executive session, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to executive session in consideration of Calendar No. 405, Michael Leavitt, to be Administrator of the EPA; further, that there be then 2 hours for debate equally divided in the usual form. I further ask unanimous consent that following that debate the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate; I further ask consent that following the vote, the President be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Madam President, on behalf of colleagues on this side of the aisle, I am compelled to object, and I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. INHOFE. Madam President, I yield the floor.

Mr. MCCAIN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I ask unanimous consent that I be permitted to speak for up to 3 minutes to make an announcement with reference to committee work in the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY CONFERENCE COMMITTEE MEETING

Mr. DOMENICI. I have an announcement on behalf of myself and Chairman BILLY TAUZIN from the House of Representatives. We have scheduled a conference meeting for Tuesday morning.

The tax writers should have completed their work on tax provisions in time to meet that schedule. We will provide conference language to all House and Senate conferees, Republican and Democrat, 48 hours in advance of the conference. We plan to make the language public 48 hours before the conference.

We see no reason that final passage of this bill cannot occur soon after the conference. Members of Congress have spent the past 3 years negotiating the resolution of a difficult regional issue and many national issues that pertain to energy and America's future. We are on the verge of completing work on a comprehensive Energy bill for the first time since 1992. This Senator believes this bill is even more significant than the 1992 bill.

To repeat, Chairman BILLY TAUZIN and myself, as chairman of our committee in the Senate, are announcing we will have a meeting of the conferees on the Energy bill on October 28, Tuesday, 10 a.m., in Dirksen 106. We have scheduled this conference for Tuesday morning, but implicit in my statement is that the tax writers have not completed their work on the tax provisions, but the two chairmen are suggesting in this announcement they should have their work completed in time for us to release that with the conference report, since it is part of it, without which there is not a conference, without which we do not know whether the rest of the work is valid or has to be changed.

Everyone who is interested at the leadership level is working to get this tax provision done. I want to repeat, it is not done. We do expect it to be done in time for this announcement to be effective.

CAN-SPAM ACT OF 2003

Mr. MCCAIN. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 209, S. 877; provided further that the committee amendment be agreed to and be considered original text for the purpose of further amendment.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 877) to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

The PRESIDING OFFICER. Is there objection to the Senator's request? Without objection, it is so ordered.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 877

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

[This Act may be cited as the "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003", or the "CAN-SPAM Act of 2003".]

SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

[(a) FINDINGS.—The Congress finds the following:

(1) There is a right of free speech on the Internet.

(2) The Internet has increasingly become a critical mode of global communication and now presents unprecedented opportunities for the development and growth of global commerce and an integrated worldwide economy.

(3) In order for global commerce on the Internet to reach its full potential, individuals and entities using the Internet and other online services should be prevented from engaging in activities that prevent other users and Internet service providers from having a reasonably predictable, efficient, and economical online experience.

(4) Unsolicited commercial electronic mail can be a mechanism through which businesses advertise and attract customers in the online environment.

(5) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(6) Unsolicited commercial electronic mail may impose significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Some unsolicited commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(8) While some senders of unsolicited commercial electronic mail messages provide simple and reliable ways for recipients to reject (or "opt-out" of) receipt of unsolicited commercial electronic mail from such senders in the future, other senders provide no such "opt-out" mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(9) An increasing number of senders of unsolicited commercial electronic mail purposefully disguise the source of such mail so as to prevent recipients from responding to such mail quickly and easily.

(10) An increasing number of senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

(11) In legislating against certain abuses on the Internet, Congress should be very careful to avoid infringing in any way upon constitutionally protected rights, including the rights of assembly, free speech, and privacy.

[(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of unsolicited commercial electronic mail;

(2) senders of unsolicited commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

SEC. 3. DEFINITIONS.

[In this Act:

(1) AFFIRMATIVE CONSENT.—The term "affirmative consent", when used with respect to a commercial electronic mail message, means that the recipient has expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative.

(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term "commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(4) DOMAIN NAME.—The term "domain name" means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) ELECTRONIC MAIL ADDRESS.—The term "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an Internet domain (commonly referred to as the "domain part"), to which an electronic mail message can be sent or delivered.

(6) ELECTRONIC MAIL MESSAGE.—The term "electronic mail message" means a message sent to an electronic mail address.

(7) FTC ACT.—The term "FTC Act" means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) HEADER INFORMATION.—The term "header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address.

(9) IMPLIED CONSENT.—The term "implied consent", when used with respect to a commercial electronic mail message, means that—

(A) within the 3-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and